

AUG 21 2012

US DISTRICT COURT
WESTERN DISTRICT OF NC

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)	DOCKET NO. <u>3:12CR258-FDW</u>
)	
v.)	<u>BILL OF INDICTMENT</u>
)	
IGOR BORODIN,)	18 U.S.C. §§ 2320(a), 2
)	49 U.S.C. § 46312
Defendant.)	
_____)	

THE GRAND JURY CHARGES:

At all times material to this Indictment:

MOTOR VEHICLE AIRBAGS

1. A motor vehicle airbag is a safety device designed to function as a part of a motor vehicle occupant restraint system to protect people, specifically drivers and passengers, in the event of a collision. Depending on a motor vehicle's year of manufacture, airbags are required by law to be installed in the interior cabin of a motor vehicle, including on the driver's side and front passenger side of motor vehicles. Airbags are designed to inflate an air-cushion bag to reduce bodily injury to people during a motor vehicle collision with other motor vehicles or objects. Airbags deployed through activation of the airbag inflator must be replaced by law.

2. A motor vehicle airbag system consist of multiple parts, including: (a) a specially-designed, nylon fabric bag, (b) an engineered sensor to trigger rapid inflation of the airbag when the force of a collision equals or exceeds a certain industry standard, and (c) an engineered airbag inflator that, when triggered, causes an instantaneous reaction of certain chemicals to produce a sufficient amount of nitrogen gas to rapidly and fully inflate the airbag to cushion the impact of

people against various objects, including the motor vehicle's steering wheel column, front dashboard and windshield, and then deflate.

TRANSPORTATION OF HAZARDOUS MATERIALS

3. Title 49, United States Code, Section 5101 provides that the purpose of Chapter 51, Title 49, United States Code is "to protect against the risks to life, property and the environment that are inherent in the transportation of hazardous material in intrastate, interstate and foreign commerce."

4. Pursuant to Title 49, United States Code, Sections 5101 *et seq.* (Transportation of Hazardous Material) and the corresponding Hazardous Materials Regulations (HMR), airbag modules, also known as airbag inflators, are classified as Class 9 UN3268 dangerous goods, also known as hazardous materials, and must be classified, documented, described, packaged, marked and labeled in accordance with the Hazardous Materials Regulations (HMR), as set forth in Title 49, Code of Federal Regulations, Sections 171 through 180.

REGISTERED TRADEMARKS

5. Automobile manufacturers own various trademarks that are registered in the principal registry in the United States Patent and Trademark Office in connection with their production, sale and distribution of their motor vehicles, motor vehicle accessories and motor vehicle parts, including motor vehicle airbags.

6. Pursuant to trademark law, automobile manufactures have the exclusive right to use and to authorize others to use trademarks registered in the principal registry in the United States Patent and Trademark Office (USPTO) in connection with the production, sale and distribution of their motor vehicles, motor vehicle accessories and motor vehicle parts, including motor vehicle airbags.

7. Consumers understand, believe and expect that motor vehicles, motor vehicle accessories and motor vehicle parts, including motor vehicle airbags, bearing the registered trademarks of automobile manufacturers means that:

- a) the automobile manufacturers have produced, sold and distributed their motor vehicles, motor vehicle accessories and motor vehicle parts, or have licensed or otherwise authorized reputable third parties to produce, sell and distribute their motor vehicles, motor vehicle accessories and motor vehicle parts, including motor vehicle airbags;
- b) the motor vehicles, motor vehicle accessories and motor vehicle parts, including motor vehicle airbags, meet the quality and safety standards of the automobile manufacturers that, at a minimum, are established by government laws, rules and regulations; and,
- c) the automobile manufacturers are responsible for defective motor vehicles, motor vehicle accessories and motor vehicle parts, including motor vehicle airbags, produced, sold and distributed by the automobile manufacturers or their licensees.

COUNT ONE

Paragraphs 1 through 7 of this Indictment are re-alleged and incorporated herein by reference as though fully set forth herein.

Between at least in or about October 2011, and August 16, 2012, in Mecklenburg County and Union County, within the Western District of North Carolina, and elsewhere,

IGOR BORODIN,

aided and abetted by others unknown to the Grand Jury, did intentionally traffic and attempt to traffic in goods, namely, motor vehicle airbags under the trade names of one or more automobile manufacturers, and knowingly used on and in connection with such goods one or more counterfeit marks, that is, spurious marks identical to and substantially indistinguishable from the genuine marks owned and used by one or more automobile manufacturers to identify such goods, which marks were

in use and registered for such goods on the principal register in the United States Patent and Trademark Office, and the use of which marks was likely to cause confusion, mistake, and deception.

All in violation Title 18, United States Code, Section 2320(a) and Title 18, United States Code, Section 2.

COUNT TWO

Paragraphs 1 through 7 of this Indictment are re-alleged and incorporated herein by reference as though fully set forth herein.

Between at least in or about October 2011, and August 16, 2012, in Mecklenburg County and Union County, within the Western District of North Carolina, and elsewhere,

IGOR BORODIN,

aided and abetted by others unknown to the Grand Jury, did wilfully deliver and cause to be delivered on at least one occasion property containing hazardous materials, that is, at least one motor vehicle airbag module, also known as airbag inflators, a Class 9 dangerous good, to at least one air carrier for transportation in air commerce, in violation of the regulations and requirements prescribed by the Secretary of Transportation, as set forth in Title 49, Code of Federal Regulations, Sections 171 *et seq.*

All in violation Title 49, United States Code, Section 46312 and Title 18, United States Code, Section 2.

NOTICE OF FORFEITURE AND FINDING OF PROBABLE CAUSE

Notice is hereby given of 18 U.S.C. § 2323, 28 U.S.C. § 2461(c), and 21 U.S.C. § 853. Under Section 2461(c), criminal forfeiture is applicable to any offenses for which forfeiture is

authorized by any other statute, including but not limited to 18 U.S.C. § 981 and all specified unlawful activities listed or referenced in 18 U.S.C. § 1956(c)(7), which are incorporated as to proceeds by Section 981(a)(1)(C). The following property is subject to forfeiture in accordance with Section 2323, 2461(c), and/or 853:

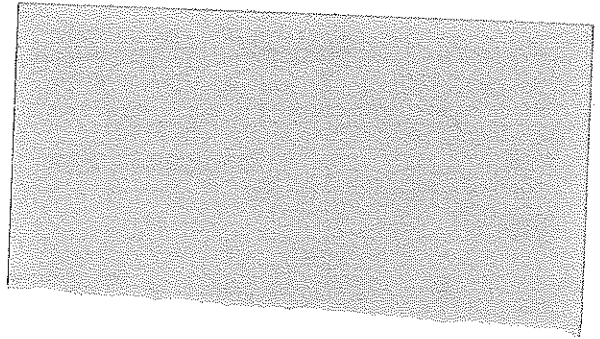
- a. Any article, the making or trafficking of which is prohibited under Section 506 of Title 17, or Section 2318, 2319, 2319A, 2319B, 2320, or Chapter 90 of Title 18;
- b. All property which constitutes or is derived from proceeds obtained directly or indirectly as a result of the violations set forth in this bill of indictment;
- c. All property used, or intended to be used, in any manner or part to commit or facilitate the commission of the violations; and
- d. If, as set forth in 21 U.S.C. § 853(p), any property described in (a), (b), or (c) cannot be located upon the exercise of due diligence, has been transferred or sold to, or deposited with, a third party, has been placed beyond the jurisdiction of the court, has been substantially diminished in value, or has been commingled with other property which cannot be divided without difficulty, all other property of the defendant/s to the extent of the value of the property described in (a), (b), and (c).

The Grand Jury finds probable cause to believe that the following property is subject to forfeiture on one or more of the grounds stated above:

- a. A forfeiture money judgment for the proceeds of the violations set forth in this bill of indictment;
- b. Approximately 99 counterfeit airbags seized during the investigation from 6833 Orr Road, Charlotte, North Carolina;

- c. Approximately 1,514 counterfeit airbags seized during the investigation from 4002 Crismark Drive, Indian Trail, North Carolina;
- d. Approximately \$60,000 in United States Currency seized during the investigation from 4002 Crismark Drive, Indian Trail, North Carolina; and
- e. The real property at 4002 Crismark Drive, Indian Trail, North Carolina, more particularly described in Union County Register of Deeds at Book 5581, Page 168.

A TRUE BILL:



ANNE M. TOMPKINS
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read 'Thomas A. O'Malley', written over a horizontal line.

THOMAS A. O'MALLEY
ASSISTANT UNITED STATES ATTORNEY